

**Expert Report
of Dale Belman, Ph.D**

Exhibit X-3

HARVARD UNIVERSITY
PROJECT LABOR AGREEMENT
FOR
MAJOR CONSTRUCTION,
RENOVATION &
REHABILITATION

May 7, 1992

Revised May 1, 2007

Article VII Revised Jan. 13, 2009

i. INDEX

	<u>Page</u>
i. Index	1
ii. Definition of Terms	2
iii. Introduction	3
Article I Purpose	3
Article II Scope of the Agreement	4
Article III Union Recognition and Employment	7
Article IV Union Representation	8
Article V Management's Rights	9
Article VI Work Stoppages and Lockouts	11
Article VII Grievances and Jurisdictional Disputes	13
Article VIII Wages and Benefits	17
Article IX Hours of Work, Overtime, Shifts & Holidays	18
Article X Safety, Protection of Persons & Property	19
Article XI No Discrimination	20
Article XII Working Conditions	20
Article XIII Savings and Separability	21
Article XIV Duration of the Agreement	21
Exhibit 1 – Letter of Assent	24
Exhibit 2 – Harvard University Construction Substance Abuse Policy	25

ii. Definition of Terms

Owner:	The President and Fellows of Harvard University
Department:	The Building and Construction Trades Council Department, A.F.L.-C.I.O
Council:	The Building and Construction Trades Council of the Metropolitan District (the “Council”)
Carpenters:	The New England Regional District Council of Carpenters
Project Contractor:	An entity working in the capacity of a general contractor or project manager for Harvard University within the Scope of this Agreement.
Contractor:	A Project Contractor or subcontractor of whatever tier engaged in on-site work within the Scope of this Agreement.
Agreement:	This Project Labor Agreement
Schedule A’s:	The local collective bargaining agreements of the respective signatory unions.
Term:	By Project, from award of the first construction contract for a Project until completion and final turn-over of the Project; See also Article XIV, Section 1.
Signatory Unions	The local unions and/or district councils and the Carpenters, that have executed the Agreement, together with the Council and the Department.
Covered Project (s):	Each individual construction, renovation and/or rehabilitation Project designated by the Owner and agreed to by the Union to be covered by this Agreement.
Union (s):	Individual or collective noun for reference to all signatory labor unions to this Agreement.
Parties:	President and Fellows of Harvard University The Building and Construction Trades Department of A.F.L.-C.I.O. The Building and Construction Trades Council of the Metropolitan District The New England Regional Council of Carpenters
Base Wage Rate:	Those rates as defined in the Schedule A’s that are paid directly to the employee excluding amounts paid for benefits.

iii. Introduction

This Agreement, originally entered into the 7th day of May, 1992, and subsequently amended, is revised this 1st day of May, 2007, by and between the President and Fellows of Harvard University, the Building and Construction Trades Department, A.F.L.-C.I.O., on behalf of its affiliated International Unions and their local unions, the Building and Construction Trades Council of the Metropolitan District on behalf of its affiliated local unions, and New England Regional Council of Carpenters on behalf of its affiliated local unions, and each on their own behalf, with respect to work on Project(s) within the Scope of this Agreement. This document and the terms and conditions contained herein, together with such amendments as may be hereinafter agreed to by the Parties, shall constitute “the Agreement” between the parties for all Projects covered by it, in lieu of all previous agreements, amendments, and or Letters of Understanding which have been applied to similar work.

Harvard University shall require all Contractors of whatever tier, as a condition of engagement on any Project covered by this Agreement, to abide by and sign this Agreement or the Letter of Assent (Attached as Exhibit 1).

No practice, understanding or agreement between a Contractor and a Union party which is not explicitly set forth in this Agreement or the Schedule A’s (which are the local Collective Bargaining Agreements) shall be binding on any other party unless endorsed in writing by the Owner, Project Contractor and the Unions.

ARTICLE I PURPOSE

The purpose of this Agreement is to provide an instrument adapted to the special needs of the Owner, the Contractors, their sub-contractors, and for the Building Tradespeople performing construction work associated with the Scope as defined herein. This Agreement has been developed to provide the timely, most efficient, cost effective, and high quality completion of the Scope that is of vital importance to Harvard University. All Project work needs to fit into tight time schedules, including shift operations and/or overtime on occasions, as major facilities are constructed on sites crowded with other educational buildings and/or as buildings are subject to major renovation or rehabilitation. This Agreement is vital to meet scheduling and financial commitments and to reduce or eliminate delays and work interruption. Therefore, the Unions agree not to engage in any picketing, strike, sympathy strike, handbilling, slowdown, interruption

or disruption of work; the Owner will not permit lockouts by its Contractors; and all parties agree that all disputes and differences among them will be resolved through the peaceful, binding processes provided by this Agreement.

ARTICLE II SCOPE OF THE AGREEMENT

Section 1. This Agreement shall apply and is limited to all new construction, major renovation and/or rehabilitation work associated with any covered Project, including site preparation and related demolition, system start-up, testing and checkout under contract with the Project Contractor.

Section 2. The Owner and Project Contractor have the absolute right to select any qualified contractor for the award of contract(s) on any covered Project, provided, however, that such Contractor is willing, ready and financially able to execute and comply with this Agreement; has or is eligible to and will sign the applicable local collective bargaining agreement(s) which form the basis for the Schedule A's; and that such Contractor executes, prior to commencement of work, this Agreement or the Letter of Assent. The Unions agree to sign such Contractors.

Section 3(a). The provisions of this Agreement, including the Schedule A's, shall apply to the Scope, notwithstanding the provisions of local, area, and/or national agreements which may conflict or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of Schedule A and not covered by the Agreement, Schedule A provisions shall prevail.

3(b). Future modifications to any Schedule A shall apply to this Agreement consistent with the effective dates of such modifications as stated in the revised Schedule A; provided, however, that any provision negotiated into a future collective bargaining agreement forming the basis for a Schedule A that applies to new construction, or rehabilitation work within the Boston/Cambridge area, will not apply to the Scope of this Agreement if such provisions are less favorable to the Owner than those uniformly required for such work normally covered by those

agreements; nor shall any provision be recognized or applied to this Agreement if it may be construed to apply exclusively or predominantly to the Scope of this Agreement.

Section 4. Signatory Unions to this Agreement and their members shall not interfere in any way with other Harvard University work being performed by Harvard's employees. The term interference does not preclude the signatory Unions or their members from publicly supporting Harvard University student initiatives on campus, provided that such initiatives do not adversely impact the work performed by Harvard employees or on Project Work.

Section 5. Items specifically excluded from the Scope of this Agreement include, but are not limited to, the following:

- a. Work of non-manual employees, such as supervisors, staff engineers, surveyors (except where expressly covered by a current Schedule A), quality control personnel, timekeepers, guards, and other professional, engineering, and administrative employees.
- b. All off-site handling of materials, equipment or machinery and all deliveries to and from any Project site, except for dedicated lay-down or storage areas and transfer between such locations and a Project site.
- c. All transportation systems between designated parking areas and a Project sites.
- d. Off-site maintenance on leased equipment, and on-site warranty functions and warranty work, including supervision of such work.
- e. Exploratory geophysical testing and boring, except where expressly covered by a current Schedule A.
- f. Laboratory or specialty testing or inspections not ordinarily done by the Unions; including all asbestos testing and inspection.
- g. Installation of specialty items purchased by the Owner may be performed by employees employed under this Agreement with the participation of other personnel in a supervisory role, or, in limited circumstances requiring special knowledge or experience with the particular item(s), may be performed by employees of the vendor or of other companies normally retained by the vendor, to protect a guarantee or warranty offered by the vendor. The signatories to this Agreement shall be given reasonable advance notice of the inclusion of specialty

items on any covered Project, the particulars of the items and the details of the warranty or guarantee. Upon timely request, representatives of the University and/or its Construction Manager will meet with representatives of the Union(s) affected by a specific utilization of this Provision to review appropriateness of such utilization and alternatives which may be available to satisfactorily meet the University's requirements and reasons for invoking this provision. Such review will not be used as a basis to delay an otherwise appropriate application of this provision. Provided it acts in good faith, the University has the exclusive and unreviewable right to determine what work is subject to this provision.

- h. All work performed in the retail/commercial portions of any Project under the direction of third party owners or leasees; they, however, will be advised of the availability of this Agreement for such work.
- i. Any work performed by or under direction of the Owner which is not within the Scope of this Agreement, and any work performed on or near, or leading to or on to, a Project site by state, county, city or similar government bodies, or their contractors, and/or public utilities or railroads, or similar organizations or their contractors. Traditional lines of demarcation shall apply between work under the direction and control of a public utility and the continuation of such work on site.

Section 6. The Owner, at its sole option, may terminate, delay and/or suspend any or all portions of the Scope at any time.

Section 7. The liability of any Contractor and of the separate Unions under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employer status between or among the Owner and any Contractor; provided, however, that this does not prevent the Unions from alleging or proving such status based on other facts.

Section 8. Projects may be added at any time during the Term of this Agreement upon the mutual consent of the Parties. Additions shall be made by means of a written addendum to this Agreement which states the specific provisions of each additional Project and which is signed by the Parties to this Agreement. All Projects added to this Agreement shall be subject to its provisions through that Project's work completion.

ARTICLE III
UNION RECOGNITION AND EMPLOYMENT

Section 1. The Owner shall require all Contractors engaged in performing work within the Scope of this Agreement to comply with all provisions of this Agreement, and Contractors shall recognize the Unions as the sole and exclusive bargaining representative of all trade employees working within the Scope of this Agreement.

Section 2. Applicants for various classifications covered by this Agreement shall be referred to the Contractor by the local unions. The Contractor shall have the right to determine the competency of all employees, to determine the number of employees required, and to select employees to be laid-off (consistent with Article IV, Section 3 below). The Contractor shall also have the right to reject any applicant referred by the local unions, subject to any show-up payments required by the applicable Schedule A.

Section 3(a). For a local union now having a job referral system in its Schedule A, the Contractor agrees to use such system exclusively, in conformance with local practices, whenever the need exists to supplement its normal workforce. Such system must be operated in full compliance with all applicable Federal, State and Local laws, regulations, ordinances, and/or Executive Orders. It is the intention of Parties to provide the maximum feasible number of job opportunities in all classifications for local residents.

(b) The Contractors and signatory unions recognize that the University and the Projects covered by this Agreement may be subject to valid, legally enforceable statutes, rules and or regulations affecting employment, including, not limited to, local hire and/or other work force requirements. All parties will cooperate fully to assure that the obligations established by such statutes, rules, or regulations are met.

Section 4. In the event that any Union is unable to fill any requisition for employees within a forty-eight (48) hour period after such requisition is made by the Contractor (Saturdays, Sunday, and Holidays excepted) the Contractor may employ applicants from any other available source.

Section 5. In the event that the local union does not have a job referral system as set forth in Section 3 of this Article, the Contractor shall give the local union first preference to refer applicants, subject to the provisions of Section 4. The Contractor shall notify the Unions of employees hired by any source other than referral from the local unions, and such employees shall be bound by the applicable Schedule A union security clause.

Section 6. The selection and number of craft forepeople and/or general forepeople shall be the responsibility of the Contractor. The procedure for selection of such foreperson and/or general forepeople may be affected by specific provisions of applicable Schedule A's. Forepeople shall take orders exclusively from the appropriate Contractor representatives. Trade forepeople shall be designated as working forepeople at the request of the Contractor, except when a Schedule A prohibits a foreperson from working when the craftspeople he/she is leading exceed a specified number.

Section 7. Except as provided in Article IV, Section 3, individual seniority shall not be recognized or applied to employees working on the Projects.

Section 8. All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable Schedule A.

ARTICLE IV UNION REPRESENTATION

Section 1. Authorized representatives of the Unions shall have access to the Projects, provided they do not impede the work of the Owner, the Owner's employees or agents or the Contractor's employees and that they fully comply with the visitor, security, and safety rules of the Projects.

Section 2. Stewards.

a. Each signatory local union having members working on the Project, shall have the right to furnish a working journeyman as a steward, and shall notify the Contractor in writing of the identity of the designated steward prior to the assumption of his duties as steward. Such designated steward shall not exercise any supervisory functions. There will be no non-working

stewards. Stewards will receive the base rate of pay of their respective crafts as defined by this Agreement.

b. The steward shall have the right to receive, but not solicit, complaints or grievances and to discuss and assist in the adjustment of the same with the employee's appropriate supervisor. The Contractor will not discriminate against the steward in the proper performance of his Union duties.

c. The steward shall not have the right to determine when overtime shall be worked or who shall work overtime, except on the basis of a Schedule A which contains a procedure for establishing equitable distribution of overtime. In the absence of such a Schedule A, the Contractor's awarding of overtime shall not be in conflict with the respective by-laws of the Unions.

Section 3. The Contractor agrees to notify the appropriate Union simultaneously with the layoff of a steward, except in the case of discipline or discharge for just cause. If a steward is protected against such layoff by the provisions of any Schedule A, such provisions shall be recognized to the extent that the steward possesses the necessary qualifications to perform the work remaining. In any case in which a steward is discharged or disciplined for just cause, the Contractor shall make reasonable efforts to notify the Union in advance of such actions and in any event the appropriate Union shall be notified immediately by the Contractor of the steward's discharge or discipline.

ARTICLE V MANAGEMENT'S RIGHTS

Section 1. The Owner through its Contractors retains full and exclusive authority for the management of its operation. Except as expressly limited by other provisions of this Agreement, the Contractor retains the right to direct the workforce, including the hiring, promotions, transfer and lay-off, as well as discipline or discharge for just cause of its employees; the selection of forepeople; the assignment and schedule of work, the promulgation of reasonable work rules; and, the requirement of overtime work, the determination of when it shall be worked, and the number and identity employees engaged for such work. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual and/or joint working efforts of employees shall be permitted or observed. The Contractor may utilize any methods or techniques of construction consistent with the Contractor's agreement (s) with the Owner.

Section 2. Except as otherwise expressly stated in this Agreement and in the Project Contractor's agreement with the Owner, there shall be no limitation or restriction upon the Contractor's choice of materials or design, nor, regardless of source or location, upon the full use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. The Contractor may without restriction install or otherwise use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special talents or qualifications may participate in the installation, check-off or testing of specialized or unusual equipment or facilities.

Section 3. It is recognized that the use of new technology, equipment, machinery, tools and/or labor-saving devices and methods of performing work will be initiated by the Contractor from time to time during the Projects. The Unions agree that they will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between the Contractor and the Unions concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Unions shall have the right to grieve and/or arbitrate the dispute as set forth in Article VII of this Agreement.

Section 4. The parties recognize that the University is committed to utilizing all relevant advancements in construction technology, architectural design, building engineering, and machinery, systems and or building component efficiencies. In limited circumstances, this may require the utilization of specialty contractors or personnel outside of the scope this Agreement. Where such is directed by the University, the Unions will be advised of the involved Contractor's plans prior to its commencement of the work. Upon timely request, representatives of the University and/or its Construction Manager will meet with representatives of the Union(s) affected by a specific utilization of this Provision to review appropriateness of such utilization and alternatives which may be available to satisfactorily meet the University's requirements and reasons for invoking this provision. Such review will not be used as a basis to delay an otherwise appropriate application of this provision. Provided it acts in good faith, the University has the exclusive and unreviewable right to determine what work is subject to this provision.

ARTICLE VI
WORK STOPPAGES AND LOCKOUTS

Section 1. There shall be no strikes, sympathy strikes, handbilling, picketing, work stoppages, slowdowns or other concerted disruptive activity affecting any students, employees, agents, guests or invitees of the Owner on work covered by this Agreement for any reason, including disputes relating to the negotiation or renegotiation of the local collective bargaining agreements serving as the Schedule A's, by the Unions or employees against any Contractor or the Owner, and there shall be no lockout by the Contractors. Failure of any Union or employee to cross any picket line established by any Union, signatory or non-signatory to this Agreement, or by any group or any other organization, at or in proximity to the Projects' sites is a violation of this Article.

Section 2. The Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible for re-referral to the Projects.

Section 3. If a Contractor contends that any Union has violated this Article, it will notify the Secretary- Treasurer of the Department, the General Agent of the Council, and the Business Manager (s) and/or President (s) of the local Union (s) and/or Council(s) involved, in writing by facsimile or electronically, advising them of the violation. The Secretary-Treasurer of the Council or his designated representative and the officials of the local Union (s) or Council (s) involved will immediately instruct, order and use the best efforts of their offices to bring the violation to an end.

Section 4. Any party, including the Project Contractor, may institute the following procedure, in lieu of or in addition to any other action at law or equity, when a breach of Section 1, above, is alleged:

- a. A party invoking this procedure shall notify Lawrence Holden (or his alternate, Roger Abrams, if Mr. Holden is unavailable) who the parties agree shall be the permanent arbitrators under this procedure. In the event that both permanent arbitrators are unavailable at any time, they shall appoint an alternate. Notice to the arbitrator shall be by the most expeditious means available, with notices by phone and facsimile to the parties alleged to be in violation and to the Council if it is a Union alleged to be in violation.

- b. Upon receipt of said notice, the arbitrator named above, or alternate, shall sit and hold a hearing within twenty-four (24) hours if it is contended that the violation still exists, but not before twenty-four (24) hours after the dispatch of the notice required by Section 3, above.
- c. The arbitrator shall notify the parties by phone, facsimile and/or e-mail of the place and time he/she has chosen for this hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party or parties to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.
- d. The sole issue at the hearing shall be whether or not a violation of Section 1, above, has in fact occurred, and the arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief, and such award shall be served on all parties by hand or registered mail upon issuance.
- e. Such award may be enforced by any court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner: Written and/or electronic notice of the filing of such enforcement proceedings shall be given to the other Parties to this Agreement. In the proceeding to obtain a temporary order enforcing the arbitrator's Award as issued under Section 4 (d) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or by delivery to their last known address or by registered mail.
- f. Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the parties to whom they accrue.

- g. The fees and expenses of the arbitrator shall be equally divided between the moving party or parties and the party or parties respondent.

Section 5. Procedures contained in Article VII shall not be applicable to any alleged violation of this Article, with the single exception that any employee discharged for violation of Section 1, above, may resort to the procedures in Article VII to determine only if he/she was, in fact, engaged in that violation.

Section 6. The Owner and Project Contractor are parties in interest in all proceedings arising under this Article and Article VII, and shall be sent copies of all notifications required under these Articles, and, at their option, may participate as a full party in any proceeding initiated under these Articles.

ARTICLE VII GRIEVANCES AND JURISDICTIONAL DISPUTES

Section 1. The Project Contractor, signatory Unions and the Council shall each assign a representative to these Projects for the purpose of working together with the Contractor(s) and Unions on each Project to maintain labor management harmony and to peacefully resolve any disputes among the parties.

Section 2. Contractual Grievances. Any questions arising out of and during the term of this Agreement involving its interpretation and application (excluding trade jurisdictional disputes and alleged violations of Article VI, Section 1) shall be considered a grievance and be subject to resolution under the following procedures:

Step 1

(a). When any employee feels he/she is aggrieved by a violation of this Agreement, he/she shall, through his/her representative or job steward, within five (5) working days after the occurrence of the violation, give verbal notice to the work site representative of the involved Contractor, stating the provision(s) alleged to have been violated and the basis for the violation. The business representative or job steward and the work site representative shall confer within three (3) working days after timely notice has been given in an attempt to resolve the matter.

(b) Should a signatory local Union(s) or the Project Contractor or any other Contractor have a dispute with another party, they shall give verbal notice to that other party(ies) within five (5) working days after the occurrence of the violation, stating the provision(s) alleged to have been violated. Their representatives shall confer in an attempt to resolve the dispute within three (3) working days after timely notice has been given.

Grievances and disputes settled at Step 1 shall be nonprecedential except as to the parties directly involved, unless they request the Project Contractor to approve the settlement and the Project Contractor endorses the settlement in writing within 5 working days.

If the parties fail to resolve the matter within the time periods outlined herein, or if the Step 1 meeting has not been held or scheduled by the parties, the grieving Union, may, within two (2) working days thereafter (Saturday, Sundays, and holidays excluded), pursue Step 2 of this grievance procedure by providing the involved Contractor, and the Project Contractor, a written grievance, setting forth relevant information, including a short description of the violation, the date on which the violation occurred, and the provision(s) of the Agreement alleged to have been violated.

Step 2

The business manager, of the involved Union(s) or his designee, the site representative of the involved Contractor(s) and the labor relations representative of the Project Contractor (or their designees) shall meet within seven (7) working days of the submission of the written grievance to arrive at the satisfactory settlement thereof. If the parties fail to reach Agreement after such meeting or if the Step 2 meeting has not been held or scheduled by the parties, the dispute may be submitted to arbitration in accordance with Step 3.

Step 3

If the grievance shall have been submitted, but not adjusted, under Step 2, either party may request in writing, within 14 calendar days after the initial Step 2 meeting, or if that meeting has not been held, within fourteen (14) days after the Step 2 meeting would have been held, that the grievance be submitted to arbitration. A copy of the demand for arbitration shall be provided to the Project Contractor and the Responsible Contractor. The case shall be assigned to a permanent arbitrator (Roger Abrams, James Cooper, or Roberta Golick), individually, on a

rotating basis by alphabet for hearing and decision. If the designated arbitrator is not available for a hearing in a reasonable period of time, the parties will submit the grievance to the next arbitrator that falls alphabetically on the rotation list. The voluntary labor rules of the American Arbitration Association shall govern the conduct of the hearing. The Arbitrator shall have the authority to make a decision only on issues presented to him/her and shall not have the authority to change, amend, add to or detract from any provision(s) of this Agreement. The decision of the arbitrator shall be final and binding on all parties. No adjustment or decision may provide retroactivity exceeding 60 days prior to the date of the filing of a written grievance. The fees and expenses of such arbitration shall be borne equally by the Responsible Contractor and the involved Union(s).

Section 3. Jurisdictional Disputes

(a) The Contractor with responsibility for the performance and installation of the work shall make the specific assignment of the work which is included in its contract, (the “Responsible Contractor”). All work assignments shall be disclosed by the Responsible Contractor (or the Project Contractor, or the responsible Contractor’s General Contractor) at a pre-job conference held in accordance with industry practice. Responsible Contractors shall notify the Project Contractor and the affected Unions of the assignment before starting work to be performed under this Agreement. The Plan for the Settlement of Jurisdictional Disputes in the Construction industry currently in effect, or its successor, shall serve as a guide for establishing jurisdiction at such meetings. Such assignment shall not be changed absent the written agreement of all parties to any dispute arising over such assignment, (including the Responsible Contractor), or pursuant to a decision issued by a permanent arbitrator appointed under this Agreement to hear and decide jurisdictional disputes. Should there be any formal jurisdictional dispute raised, the Project Contractor shall be promptly notified.

(b) Should a signatory Union(s) wish to raise a jurisdictional claim after a formal assignment has been made, they shall provide a written claim notice to the Responsible Contractor and the Union(s) assigned the work in question within five (5) working days of the notification of the formal assignment, (with a copy to the Project Contractor), briefly describing the basis for the claim.

Step 1. Within three (3) working days after the raising of a jurisdictional claim, the involved Unions, and the Responsible Contractor, at his option, shall meet and confer in an attempt to resolve the claim. Should the claim not be resolved at such meeting, the parties shall have three (3) additional working days to request and receive the assistance of the International Representatives of the involved Unions in a further attempt to resolve the dispute. Should the dispute not be resolved within six (6) days from filing the formal written jurisdictional claim, the claiming Union(s) may submit the jurisdictional claim to the Permanent Jurisdictional Disputes Arbitrator, Ken Paradis, for hearing and decision. The submission to the Arbitrator must be filed, in writing, within eight (8) working days from filing the initial written claim, unless such time limit is extended by mutual agreement of all affected Unions and contractor parties or by order of the Arbitrator.

Step 2. The permanent arbitrator shall schedule and commence a hearing on any jurisdictional disputes properly submitted to him within 14 days of receipt of the written submission to arbitration. Extensions of this time will only be allowed upon written approval of the permanent arbitrator. The voluntary labor rules of the American Arbitration Association shall govern the conduct of the hearing. The hearing shall be completed within five (5) consecutive calendar days inclusive of recesses (not to exceed one day each at the sole discretion of the arbitrator). The Arbitrator's decision shall be issued within forty-eight (48) hours of the close of the hearing, with a written opinion issued within fourteen (14) days thereafter. The award shall apply only to the remaining work on the initial assignment by the Responsible Contractor.

(c) In a jurisdictional dispute arbitration involving the New England Regional Council of Carpenters, which has not agreed to be bound by the provisions of the Plan, the Arbitrator's decision shall be based on the Arbitrator's findings of the relevant area practice regarding the assignment of work in dispute. In all events, the assignments of the Contractor(s) shall be followed until the dispute is resolved. Any award or resolution involving a jurisdictional dispute shall be final and binding on the disputing Unions and involved Contractor(s) on the specific Project only, and may be enforced in any court of competent jurisdiction. Such award or resolution shall not establish precedent for other construction work not covered by this Agreement. The fees and expenses of such arbitration shall be born equally by the involved Responsible Contractor and Unions.

(d) In making any jurisdictional determination herein, there shall be no authority to award back pay or other retroactive compensation, or to assign work to a double crew, that is, to more employees than the minimum required to perform the work involved; or to assign the work to employees who are not experienced and qualified to perform the work involved. This does not prohibit the establishment, at the arbitrator's direction, or with the agreement of the involved contractor, of composite crews where more than one (1) employee is needed for the job. The aforesaid determination shall decide only to whom the disputed work belongs. The work subject to a jurisdictional dispute shall proceed as assigned by the Responsible Contractor until finally resolved under the applicable procedure of this Article.

Section 4. Time Limits. Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. The time limits may be extended only by written consent of the parties involved at the particular Step where the extension is agreed upon.

ARTICLE VIII WAGES AND BENEFITS

Section 1.a. All employees covered by this Agreement shall be classified in accordance with work performed and paid one hundred percent (100%) of the basic hourly wage rates for those classifications as specified in the Schedule A's.

b. The average billing rate for apprentices shall not exceed 60% of the respective journeyman wage rates as stated in Schedule A, except for those trades specifically listed below in (c) whose average apprentice billing ratio shall be 70%.

c. The average ratio of journeyman to apprentices, on a building by building basis, shall be no less than 2:1 except for carpenters, electricians, painters, tile workers and iron workers, whose ratios shall not be below 1:1. Ratios for each trade will be established prior to bidding on a job by job basis, by the Project Contractor in concert with the Owner and subtier Contractors and in consultation with the Council and Carpenters. A listing by trade by job, which complies with the above ratios, will be forwarded to the Parties to this Agreement prior to bidding.

d. For installation of voice and data systems covered by this Agreement, the Telecommunication Rate shall apply.

Section 2. The Owner and Contractor agree to timely pay contributions to the established employee benefit funds in the amounts designated in the appropriate Schedule A. The Project Contractor, upon timely notice from the Unions or the trustees of a recognized fund shall withhold, in an appropriate amount, any funds due and owing to a subtier Contractor who is delinquent in his/her payments required under this section; and shall not release such withholding until notified by the appropriate trustees or administrator of the joint benefit fund. The Owner, in the case of the Project Contractor withholding, and the Project Contractor and Owner, in the case of subtier Contractors withholding, shall be held harmless by the Unions for any such withholding.

ARTICLE IX HOURS OF WORK, OVERTIME, SHIFTS AND HOLIDAYS

Section 1. Work week and work day. The standard work week shall consist of 40 hours, Monday through Friday. Shifts shall be for a minimum period of five days. The Projects' standard work day shall consist of 8 hours of work. However, the Owner and Project Contractor shall not guarantee 8 hours per day or 40 hours per week. The Owner shall be entitled to change the standard work day hours for first, second and third shifts without incurring a premium if, in the Owner's opinion, altered shifts would benefit the overall coordination between labor forces and building occupants, or if an altered shift would minimize inconvenience to the primary operations of the University. Make-up days shall be performed in accordance with attached Schedule A's. Starting and quitting time shall occur at the employees' change area.

a. Due to the unique aspects of scheduling and performing asbestos containing material (ACM) removal, Contractors shall be permitted to establish Project-specific hours for ACM removal that may not comply with Section 1 if altered hours of operation are deemed prudent or necessary to adhere to work production schedules and/or building occupancy concerns.

Section 2. Overtime. Overtime rates shall be paid in accordance with the applicable Schedule A's. The Unions agree to perform overtime work as requested and further agree there shall be no pyramiding of premium pay under any circumstances. Unions agree to perform overtime work as requested.

Section 3. A Contractor may, when it considers it necessary, suspend all or a portion of the job to protect the life and safety of an employee. In such cases, employees will be compensated only for the actual time worked; provided, however, that where the Contractor requests employees to remain at the site and available for work, the employees will be compensated for the standby time at the rates of pay established by this Agreement.

Section 4. Shifts. Shift differentials shall be paid on this project in accordance with the applicable Schedule A's.

Section 5. Holidays. Recognized non-paid Federal/State holidays on these Projects shall be: 1. New Year's Day; 2. Martin Luther King, Jr. Day; 3. Presidents Day; 4. Patriot's Day; 5. Memorial Day; 6. Independence Day; 7. Labor Day; 8. Columbus Day; 9. Veterans Day; 10. Thanksgiving; 11. Christmas Day. Work schedule for commencement week shall be determined by the Owner. The Owner shall not incur costs for days not worked during that week.

ARTICLE X SAFETY, PROTECTION OF PERSON AND PROPERTY

Section 1. In accordance with the requirements of the Occupational Safety and Health Act, it shall be the exclusive responsibility of each Contractor on the Projects' sites to ensure safe working conditions for its employees and their compliance with any safety rules contained herein or established by any Contractor or Project Contractor. It is understood that the employees have an obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor and the Owner. Employees shall be bound by the safety, security and visitor rules established by the Contractor and/or the Project Contractor in accordance with applicable state and federal safety and health statutes and regulations. These rules will be published and posted in conspicuous places throughout the Projects.

Section 2. The inspection of incoming shipments of equipment, machinery and construction materials of every kind shall be performed at the discretion of the Contractor by individuals of its choice. All employees shall comply with the security procedures established by the Owner, Project Contractor, and/or Contractor.

Section 3. At the direction of the Owner, the Harvard University Construction Substance Abuse Program (Exhibit 2) shall apply to all Project sites.

Section 4. Security of each Project Site is important for the safety of the personnel properly on the site, the protection of equipment and materials, and the overall safety of the University community and its neighbors. As a result, at the University's direction, the Project Contractor may limit access to the site to those employed on the site or otherwise with appropriate business for access to the site. This may include a requirement that employees utilize a "brassing" (or similar identification system) to check in and out, and/or for site access. Each employee must check himself/herself in and out and the Contractor will provide adequate facilities for checking in and out in an expeditious manner. Further all visitors may be required to report to a specific security facility and appropriately identify themselves before entering on the site. Because of crowded conditions on the site and in the University area generally, and for the safety of all involved, employee and visitor access by automobile may be limited to certain roads and/or parking areas. All rules and regulations relating to site safety and access shall be prominently posted for all employees and visitors, and those affected by such rules and regulations shall comply or be subject to discipline or other appropriate penalty.

ARTICLE XI NO DISCRIMINATION

The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment on any unlawful basis, including, but not limited to race, color, religion, sex, sexual orientation, disability, national origin or age in any manner prohibited by law or regulation. Any complaints regarding the application of this provision should be brought to the immediate attention of the involved Contractor. The Unions shall cooperate with all Contractors in complying with the Owner's Equal Employment Opportunity guidelines.

ARTICLE XII WORKING CONDITIONS

Section 1. Anti-Gouge Clause. Harvard University reserves the right to analyze any trade's sub-bid that seems unreasonable. A review committee comprised of Harvard University, the Project Contractor and a representative of the appropriate Union party to this Agreement, shall be convened to review the trade's bids in question. If this committee is unable to resolve

PROJECT LABOR AGREEMENT

As adopted on November 10, 2004 by the
Southwestern Illinois Building & Construction Trades Council Board of Business Agents

This Agreement is entered into this 7th day of May, 2008 by and between Alberici Constructors, Inc. and the Southwestern Illinois Building Trades Council (SIBTC) for and on behalf of its affiliates which sign Attachment A Union Letter of Assent (Signatory Union Affiliates) for this Project Labor Agreement, hereinafter referred to as the "Union." This Agreement shall apply to work performed by the Employer and its Contractors and Subcontractors on Construction known as the ABIL Ethanol Plant - Madison County, Illinois.

ARTICLE I - INTENT AND PURPOSES

1.1 This Project Agreement shall apply and is limited to the recognized and accepted historical definition of new construction work under the direction of and performed by the Contractor(s), of whatever tier, which may include the Project Contractor, who have contracts awarded for such work on the Project. Such work shall include site preparation work and dedicated off-site work.

The Project is defined as: ABIL (Abengoa Bioenergy of Illinois, LLC) Ethanol Plant - Madison County, Illinois

1.2 It is agreed that the Project Contractor shall require all Contractors of whatever tier who have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement by executing the Letter of Assent (Attachment A) prior to commencing work. The Project Contractor shall assure compliance with this Agreement by the Contractors. It is further agreed that the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, (including all vertical agreements), except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of the International Union of Elevator Constructors.

1.3 The Contractor agrees to be bound by the terms of the Collective Bargaining Agreements and amendments thereto of the Signatory Union Affiliates and the applicable employers association, if any, with the Signatory Union Affiliates with which it has a present bargaining relationship. If there has previously been no such bargaining relationship, the contractor or subcontractor shall sign and be bound to all such agreements with Signatory Union Affiliates as outlined in the scope of work in the required pre-job conference. Such agreements are incorporated herein by reference. In order to comply with the requirements of the various fringe benefit funds to which the Contractor is to contribute, the Contractor shall sign such participation agreements as are necessary and will honor the fringe benefit collection procedures as required by the Collective Bargaining Agreement with the Signatory Union Affiliate.